S.B. CIVIL FIRST APPEAL NO.235/2005

Suresh Choudhary and others.

vs.

Chandra Singh Choudhary and others.

Date : 19.7.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. GR Goyal, for the petitioner.

Mr. Rajendra Mehta) for the respondents/caveators.
Mr. MR Singhvi)

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Heard learned counsel for the parties.

This first appeal has been filed to challenge the judgment and decree of the trial court dated 30.3.2005 by which the application of one of the defendants (not of the appellants) filed under Order 7 Rule 11 CPC was allowed by the trial court and the suit for partition of the property was dismissed by the trial court.

The appellants who did not submit the written statement and did not sought relief of partition of the property has preferred this first appeal.

According to learned counsel for the appellants, the appellants submitted application before the trial court for being impleaded as plaintiffs but that application was rejected by the trial court by observing that the appellants can safeguard their interest by remaining

defendants also.

Learned counsels appearing for caveators submitted that the appellants, though submitted application for transposition and for becoming plaintiffs, but did not sought relief for partition of the properties. It is also submitted that the first appeal is not maintainable as it has been filed by the party who did not claim any partition of the property in the suit and the trial court dismissed the suit of the plaintiffs after rejecting the appellants' application for transposing them as the plaintiffs. It is also submitted that since the Court has not decided any of the right, title or interest and rejected the plaint under Order 7 Rule 11 CPC and since the appellants did not claim any partition in the suit which was dismissed by the trial court, therefore, if any right of the appellants is there for filing of the suit for partition, that is intact, subject to objections which the respondents/caveators may have.

Learned counsel for the appellants submits that the appellants will, therefore, prefer to file a regular suit for partition.

In view of the above, I do not find any reason to interfere in the judgment dated 30.3.2005 by which the trial court allowed the application of the defendants and rejected the plaint of the plaintiff and has not determined the rights of the present appellants, who were co-

defendants along with other defendants who submitted application under Order 7 Rule 11 CPC.

The revival of the suit on the basis of the appellants' application will result into revival of the suit on the application of the defendants and that also will need denovo pleadings of the new plaintiffs (at present defendants) for which he will have to submit proper pleadings.

If this appeal is allowed and the order will be set aside, then there will be the entirely new plaint to be filed by the appellants. No useful purpose will be served by doing this exercise.

In view of the above, this appeal is dismissed with liberty to the appellants to file fresh suit and all the parties defendants shall have liberty to raise all their objections.

(PRAKASH TATIA), J.

S.Phophaliya